2024 INSC 744

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 30250 of 2018)

LAKHA SINGH **....APPELLANT(S)**

VERSUS

BALWINDER SINGH & ANR. **....RESPONDENT(S)**

J U D G M E N T

Mehta, J.

1. Heard.

2. Leave granted.

3. This appeal by special leave is directed against the judgment dated 25th April, 2018 rendered by the High Court of Punjab and Haryana at Chandigarh, whereby the second appeal[1] preferred by the appellant-defendant was dismissed, and the judgment dated 20th March, 2017 passed by the learned Additional District Judge,

[1] RSA No. 4577 of 2017(O&M).

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Tarn Taran[2] in Civil Appeal[3] was affirmed. The First Appellate Court dismissed the Civil Appeal preferred by the appellant-defendant and upheld the judgment and decree dated 18th February, 2013 passed by the learned Additional Civil Judge (Senior Division), Patti, Tarn Taran[4] in Civil Suit[5] filed by the respondent-plaintiff. The trial Court allowed the suit partly, directing the recovery of Rs. 16,00,000/- and the interest accrued thereupon from the appellant-defendant by way of alternative relief of recovery while denying the prayer of specific performance sought for by the respondent-plaintiff.

4. The facts in a nutshell relevant and essential for disposal of the appeal are noted hereinbelow.

5. The respondent-plaintiff filed the subject suit in the trial Court seeking a decree for specific performance of an agreement to sell dated 7th May, 2007[6] in respect of an agricultural plot of land admeasuring 30 *Kanals* 8 *Marlas*[7] located at Village Amrike, Tehsil Patti, District Tarn Taran, Punjab. Besides the relief of specific performance, the respondent-plaintiff also sought permanent

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[2] 'First Appellate Court'.
[3] Civil Appeal No. 05 of 2016.
[4] 'trial Court'.
[5] Civil Suit No. 535 of 2008.
[6] 'disputed agreement'.
[7] 'suit land'.

injunction for restraining the appellant-defendant from alienating the suit land and dispossessing the respondent-plaintiff from the same. In the alternative, respondent-plaintiff sought relief of recovery of Rs.19,00,000/- including the amount of Rs.16,00,000/- paid as earnest money on the date of execution of the disputed agreement along with the damages to the tune of Rs.3,00,000/-.

6. The respondent-plaintiff averred in the plaint that the appellant-defendant, being the owner of the suit land, had agreed to sell the same to the respondent-plaintiff *vide* the disputed agreement wherein, the rate of the land was fixed at Rs.5,00,000/- per *Killa* with a condition to get the sale deed executed and registered on 19th September, 2008. As per the recitals in the disputed agreement, the appellant-defendant received a sum of Rs.16,00,000/- by way of earnest money on the date of the execution of the agreement with a further stipulation that the balance consideration would be paid on 19th September, 2008, when both the parties would appear at the Registrar office. It was further stipulated that if on the said date, the appellant-defendant failed to execute the registered sale deed then, he would become liable to return the earnest money to the tune of Rs.16,00,000/-

along with penalty of equal amount, totalling to Rs.32,00,000/- to the respondent-plaintiff. Even after receiving the money and the penalty, the respondent-plaintiff would be entitled to file a suit for getting the sale deed executed in his favour. This disputed agreement was attested by two witnesses namely, Major Singh (PW-4) and Balwinder Singh (PW-2).

7. It was also averred in the plaint that a part of the property was under mortgage with respondent No. 2 i.e. The State Bank of Patiala. The respondent-plaintiff claimed that he reached the Office of Joint Registrar, Khem Karan on the date stipulated in the disputed agreement i.e. 19th September, 2008 and remained present there from 09:00 am to 05:00 pm waiting for the appellant-defendant to arrive. However, the appellant-defendant did not turn up to get the sale deed registered in favour of the respondent-plaintiff, thereby violating the terms and conditions of the agreement. As such, the respondent-plaintiff got an affidavit of attendance attested from the Executive Magistrate, Khem Karan, who was also discharging the duties of the Joint Sub-Registrar, Khem Karan. In this manner, the respondent-plaintiff claimed to have marked his presence before the Joint Sub-Registrar showing

his readiness and willingness to get the sale deed executed and registered in his favour, in terms of the disputed agreement.

8. Respondent-plaintiff further averred in the plaint that the appellant-defendant had breached the terms of the disputed agreement and was not ready and willing to execute and get the sale deed registered despite numerous requests, being made. The respondent-plaintiff also averred that the possession of the land, was handed over to him at the time when the disputed agreement was executed and that the respondent-plaintiff continued to remain in possession of the suit land as a prospective vendee. Apprehending that the appellant-defendant could alienate the suit land in favour of some other person, thereby dispossessing him, the respondent-plaintiff filed the subject suit[8] seeking reliefs in the following terms: -

> **"**It is therefore respectfully prayed that a decree for Specific Performance of Agreement to sell dated 7.5.2007 with regard to land measuring 30 Kanals 8 Marlas detail of which is as follows:
>
> > a. Land measuring 12 Kanals 14 Marlas i.e. 4/72 share of land measuring 229 Kanals 5 Marlas bearing Khata/Khatoni No. 153 /372 to 379, Rectangle and Killa Nos. 31//14//1, 20, 21, 32//15, 17,327/24, 25, 337/5, 31/722, 347/9, 2,31//12, 13, 19, 317/2671, 327/16, 337/74, 6, 7, 14,15,16, 25, 347/1, 10,20,44//5, 32//4, 5,6,7.8/1, 14/2, 32/714/1, 337/17

[8] Civil Suit No. 535 of 2008

b. Land measuring 7 Kanals 17 Marlas i.e. 1/3rd share of land measuring 23 Kanals 10 Marlas bearing Khata/Khatoni No. 153/374, Rectangle and Killa Nos. 327/22, 34/79,2.

c. Land measuring 9 Kanals 17 Marlas i.e. 4/72 share of land measuring 170 Kanals 10 Marlas bearing Khata/Khatoni No. 101/243, 244/, 244.1 246, 102/246 Rectangle and Killa Nos. 31/ /11, 8/2, 19/22/221//14, 15, 16, 17, 24, 25, 22//2, 3/1, 10/2, 22//9, 11,12, 19, 20, 21, 22, 31//1,2,10 min (6-16), 32//1,2.21/211/9,10 nub, (1-4), 21//22,23,32//3/1, situated in village Amrike Tehsil Patti district Tarn Taran as per Jamabandi 2002-2003 on payment of Rs.3,00,000/- or any sum which this Hon'ble Court finds due and for execution and registration of sale deed and for delivery of symbolic actual possession of above land to the plaintiff with consequential relief of permanent injunction thus, restraining the defendant no. 1 from alienating the suit land with anybody in any way, except the plaintiff and also restraining the defendant no. 1 forever from dispossessing the plaintiff forcibly from land measuring 30 Kanals 8 Marlas bearing Khasra No. 31//14/1 min (1-0), 20, (7-16), 21 (8-32)/715 (7-12), 327//17 (7-0) situated at Village Amrike, Tehsil Patti, District Tarn Taran as per Jamabandi for the year 2002 - 03 and also restraining the defendant no. 1 from interfering in the peaceful possession of the plaintiff over the same.

In the alternative, suit for recovery of Rs.19,00,000/- detailed as follow:

a) Amount of earnest money paid on 7.5.2007 at the time of execution of agreement i.e., Rs.16,00,000/-.

b) Amount of damage and compensation for breach of contract dated 7.5.2007 of Rs. 3,00,000/-, totalling to Rs. 19,00,000/- be passed in favour of plaintiff and against the defendant No.1 with costs.

Any other relief to which the plaintiff is found entitled to that may also kindly be granted in favour of plaintiff."

9. The appellant-defendant, upon being summoned, appeared before the trial Court and filed a written statement denying the

averments made in the plaint. It was specifically averred in the written statement filed by the appellant-defendant that the disputed agreement was without consideration, result of misrepresentation, impersonation and must have been prepared fraudulently by the respondent-plaintiff who was an employee of the Punjab police, posted as the Head Constable at Amritsar by colluding with the scribe and the attesting witnesses.

10. It was further alleged that the respondent-plaintiff's brother was a commission agent and ran a commission business at Mandi, Amarkot. The appellant-defendant used to sell his agricultural produce through the commission agency of the respondent-plaintiff's brother. The appellant-defendant was an illiterate simpleton and the respondent-plaintiff, and his brother used to get the thumb impressions of the customers/agriculturists including the appellant-defendant on blank stamp papers. It was specifically asserted in the written statement that the disputed agreement had been prepared by fraudulent means on one of such blank stamp papers, on which the thumb impression of the appellant-defendant had been taken by deceitful means. The appellant-defendant also denied the receipt of sale consideration from the respondent-plaintiff and asserted that he was not bound by the disputed

agreement. A plea was also made by the appellant-defendant that the market rate of agricultural land in Village Cheema Khurd was not less than Rs.12,00,000/- per *Killa* and that there was no reason for the appellant-defendant to have sold his valuable land to the respondent-plaintiff at a throw away rate of Rs.5,00,000/- per *Killa*, more particularly as the suit land was his only source of livelihood.

11. A pertinent plea was also taken by the appellant-defendant that the suit for specific performance of the disputed agreement and for permanent injunction, was bad for non-joinder of necessary parties because all the co-sharers of the suit land were not arrayed as parties in the subject suit. Based on aforesaid pleadings of the parties, the trial Court framed the following issues for determination: -

> "1. Whether the defendant no. 1 executed an agreement to sell dated 7.5.2007 regarding land measuring 30 Kanals 8 Marlas in favour of the plaintiff? OPP.
>
> 2. Whether the plaintiff is entitled for specific performance of agreement to sell? OPP.
>
> 3. Whether the plaintiff is entitled in the alternative to recover Rs.19,00,000/- from the defendant no. 1? OPP.
>
> 4. Whether the plaintiff and defendant no. 1 were owner/co-sharer in possession to the extent of his share in the disputed property? OPP.
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> 5. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.
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> 6. Whether the suit is maintainable in the present form? OPP.

7. Whether the plaintiff has locus standi to file the present suit? OPP.

8. Whether the cause of action arisen to the plaintiff for filing of present suit? OPP.

9. Whether the suit is bad for non-joinder of necessary parties? OPP.

10. Whether the plaintiff has not come to the court with clean hands? OPD.

11. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.

12. Relief."

12. The issue No.2*(supra)* regarding entitlement of the respondent-plaintiff for specific performance of the disputed agreement and the affiliated issue No. 5*(supra)* for the relief of permanent injunction were decided against the respondent-plaintiff. However, issue No.3*(supra)* regarding the alternative relief seeking recovery of the amount to the tune of Rs. 19,00,000/- was partly decided in favour of the respondent-plaintiff and partly against him. The trial Court recorded the following findings: -

a. It was an admitted fact that the appellant-defendant was the owner of the suit land and respondent-plaintiff while appearing as PW-1 produced on record the agreement to sell[9], duly signed by the appellant-defendant.

[9] 'disputed agreement'

b. The respondent-plaintiff testified that the appellant-defendant had agreed to sell the suit land in his favour and received a sum of Rs. 16,00,000/- as earnest money with a condition to execute the sale deed on 19th September, 2008.

c. On the date fixed as per the disputed agreement, the appellant-defendant failed to appear at the office of the Sub-Registrar whereas the respondent-plaintiff got his presence marked by way of an affidavit attested by the Executive Magistrate-cum-Sub-Registrar, Khem Karan.

d. The version of the respondent-plaintiff was also corroborated by the attesting witnesses namely, Major Singh (PW-4) and Balwinder Singh (PW-2).

e. That the respondent-plaintiff had proved the execution of the disputed agreement and his willingness to get the sale deed executed by cogent evidence.

f. That the possession of the suit land was never handed over to the respondent-plaintiff although this fact was mentioned in the disputed agreement.

g. That the person who pays a huge amount and fixes a long date for the execution of the sale deed, would not be

expected to wait for possession to be taken in future. However, in the case at hand, the date fixed for the execution of the sale deed was after a period of about a year and four months from the date of the execution of the disputed agreement.

13. Based on the aforesaid findings, the trial Court concluded that the transaction between the parties appeared to be a loan transaction rather than an agreement for sale and purchase of the property and held that the respondent-plaintiff was not entitled to the relief of specific performance of the agreement in respect of the suit land. However, the respondent-plaintiff was held to be entitled to recover the earnest money paid to the appellant-defendant at the time of the execution of the agreement along with interest.

14. The trial Court decreed the suit *vide* judgment dated 18th February, 2013 and directed the appellant-defendant to refund the earnest money to the tune of Rs. 16,00,000/- with *pendente lite* interest @ 9% per annum and future interest @ 6% per annum to the respondent-plaintiff.

15. As noted above, the first appeal as well as the second appeal preferred by the appellant-defendant against the judgment and decree rendered by the trial Court stood rejected by the First

Appellate Court and the High Court, respectively *vide* judgments dated 20th March, 2017 and 25th April, 2018. These judgments are subjected to challenge in this appeal by special leave.

16. Shri Ankit Goel, learned counsel for the appellant-defendant, vehemently and fervently contended that the findings of facts recorded by the Courts below, though concurrent, are perverse on the face of the record and thus, it is a fit case warranting interference by this Court in exercise of the jurisdiction conferred by Article 136 of the Constitution of India.

17. To buttress the above contention, learned counsel for the appellant-defendant, drew the Court's attention to the following excerpts from the cross-examination of the respondent-plaintiff (PW1): -

> "Amarjit Singh S/o Massa Singh is my real brother. He is running a commission agent shop at Amarkot, and the name of the commission agent shop is Cheema Trading Company, at Amarkot. I know Lakha Singh from my childhood. He belongs to my village. I do not know whether Lakha Singh deft sold his agriculture produce through the commission agent shop of my brother Amarjit Singh. I am posted as Head constable in Punjab Police and now posted at Ludhiana at Division no. 11nd. The agreement was scribed at Patti by a typist, but I do not know his name.
>
> Possession was not delivered on the basis of agreement to sell. It was mentioned in the agreement that the possession will be delivered on the agreement but the defendant refused to deliver the possession of the land agreed to sold the land to me.
>
> I file the income tax return because I am employee of Punjab Govt. I have not shown the amount of Rs.16,00,000/- in my income tax return. It is correct if any Govt. employee want to purchase any land it is necessary to get the permission from

> their department. I have not taken any permission from my department before purchasing the agreement to sell with the defendant not I show any amount of Rs. Sixteen lakh to my department. It is correct that agriculture income also not shown in my income tax return. I have never shown my agricultural income in my income tax return.
>
> This amount was not withdrawn by me from any bank & this amount was lying be me in my house.
>
> It is correct that at present the marked rate in vill. Cheema Khurd Rs. 9/10 lakhs per Killa.
>
> It is also wrong. to suggest that defendant never purchase the stamp paper through Angrej Singh for execution of the agreement to sell dated 07-5-2007. It is also wrong to suggest that agreement is prepared and dated with the collusiveness of the attesting witnesses. It is also wrong to suggest defendant never receipt any amount of Rs.16 lakhs from me as earnest money. It is also wrong to suggest deft use to sell his agriculture produce at that shop of my brother Amarjit Singh. It is also wrong to suggest my brother might have got the thumb impression by fraud."

18. He highlighted and stressed upon the following facts elicited from the deposition *(supra)* of the respondent-plaintiff: -

a. The respondent-plaintiff was employed as a Head Constable in the Punjab Police at the time of the incident.

b. The respondent-plaintiff's brother was running a commission agent shop at Mandi Amarkot.

c. Contrary to the recital in the disputed agreement that the possession of suit land was given to the respondent-plaintiff, it was admitted by the respondent-plaintiff in his evidence that the possession of suit land was not handed over to him on the basis of the disputed agreement.

d. The respondent-plaintiff admitted that he used to file Income Tax returns being an employee of the Punjab Government, but he did not show the amount of Rs.16,00,000/- in the Income Tax return.

e. He also admitted that he had not obtained any permission from the department to purchase the suit land.

f. The respondent-plaintiff admitted that the amount in question was not withdrawn from any bank and the currency notes used for the transaction were lying in his house.

g. He also admitted that the market rate of the land in Village Cheema Khurd was around Rs.9-10 lakhs per *Killa*.

h. He denied the suggestion given on behalf of the appellant-defendant that his brother Amarjeet Singh had procured the thumb impression of the appellant-defendant on blank stamp papers by fraud.

19. Learned counsel urged that the admissions as appearing in the testimony of the respondent-plaintiff, completely discredit the version regarding the execution of the disputed agreement. Therefore, he submitted that the findings recorded in the judgments of the Courts below are patently perverse and are based

on misreading/ignorance of the admitted facts available on record and thus, the appeal merits acceptance and the impugned judgments deserve to be reversed.

20. *Per contra*, learned counsel representing the respondent-plaintiff, supported the findings recorded in the impugned judgments. He urged that the trial Court, the First Appellate Court and the High Court appreciated and re-appreciated the evidence minutely and have arrived at an unimpeachable conclusion that the transaction in question was a loan transaction *inter se* between the respondent-plaintiff and the appellant-defendant and thus, the appellant-defendant was rightly held liable to reimburse the amount of loan secured from the respondent-plaintiff at the time of the execution of the disputed agreement. He urged that the law is well settled that this Court whilst exercising the jurisdiction under Article 136 of the Constitution of India, would not enter into pure questions of fact so as to reverse the well-reasoned judgments of the Courts below. On these counts, learned counsel for the respondent-plaintiff implored the Court to dismiss the appeal.

21. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material placed on record.

22. It is trite law that jurisdiction under Article 136 of the Constitution of India should not be exercised unless the findings on facts recorded by the Courts below suffer from perversity or are based on omission to consider vital evidence available on record.

23. The scope of an appeal by special leave under Article 136 of the Constitution of India against concurrent findings is well-established. In the case of ***Sukhbiri Devi v. Union of India***[10], this Court noted:

> **"3.** At the outset, it is to be noted that the challenge in this appeal is against concurrent findings by three Courts, as mentioned hereinbefore. The scope of an appeal by special leave under Article 136 of the Constitution of India against the concurrent findings is well settled. In *State of Rajasthan* v. *Shiv Dayal*[11] reiterating the settled position, this Court held that a concurrent finding of fact is binding, unless it is infected with perversity. It was held therein: —
>
> > "**When any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.** (see observation made by learned Judge Vivian Bose, J. as His Lordship then was a Judge of the Nagpur High Court in *Rajeshwar Vishwanath Mamidwar* v. *Dashrath Narayan Chilwelkar*, AIR 1943 Nag 117 Para 43)."
>
> **4.** Thus, evidently, the settled position is that **interference with the concurrent findings in an appeal under Article 136 of the Constitution is to be made sparingly, that too when the judgment impugned is absolutely perverse**. On appreciation of evidence another view is possible also cannot be a reason for substitution of a plausible view taken and

[10] 2022 SCC OnLine SC 1322.
[11] (2019) 8 SCC 637.

> confirmed. We will now, bearing in mind the settled position, proceed to consider as to whether the said appellate power invites invocation in the case on hand."
>
> (emphasis supplied)

24. This Court in ***Mekala Sivaiah v. State of A.P.,***[12] while dealing with its power under Article 136 to interfere with concurrent findings held the following: -

> **"15.** It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice.
>
> **16.** It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the findings of fact concurrently arrived at by the trial court and the High Court are correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, that this Court would interfere with such finding of fact.
>
> …
>
> **18. In *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat* [*Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat*, (1983) 3 SCC 217 : 1983 SCC (Cri) 728], a two-Judge Bench of this Court held that this Court does not interfere with the concurrent findings of fact unless it is established:**
>
> **18.1. That the finding is based on no evidence.**
> **18.2. That the finding is perverse, it being such as no reasonable person could arrive at even if the evidence was taken at its face value.**
> **18.3. The finding is based and built on inadmissible evidence which evidence, excluded from vision, would negate the prosecution case or substantially discredit or impair it.**

[12] (2022) 8 SCC 253.

> **18.4. Some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded."**
>
> (emphasis supplied)

25. Keeping in mind the aforesaid principles, we shall now advert to the submissions advanced on behalf of the parties with reference to the findings recorded by the Courts below and the material available on record.

26. The respondent-plaintiff filed the subject suit with a pertinent assertion that the disputed agreement was executed by the appellant-defendant for sale of his agricultural land admeasuring 30 *Kanals* and 8 *Marlas* at the rate of Rs.5,00,000/- per *Killa*. As per the recital in the agreement, the respondent-plaintiff paid a sum of Rs.16,00,000/- in cash to the appellant-defendant at the time of the execution of the disputed agreement.

27. At this stage, a very crucial fact which is noticeable from the disputed agreement needs to be highlighted. It is not in dispute that the stamp papers were not purchased by the appellant-defendant and rather Amarjeet Singh was the person who purchased the same. The document was typed out in *Gurmukhi* language and the photostat copy thereof is available on record. A visual overview of the disputed agreement would show that it runs into three pages. The signature of the respondent-plaintiff, and the

thumb impression of the appellant-defendant are marked only on the last page thereof. The first and second pages of the agreement, do not bear the signature of the respondent-plaintiff or the thumb impression of the appellant-defendant. There exist significant blank spaces at the foot of the first two pages below the transcription typed out on these two pages. These observations give rise to a strong inference fortifying the contention of the appellant-defendant's counsel that the thumb impression of the appellant-defendant may have been taken on a blank stamp paper and the disputed agreement was typed thereon subsequently.

28. It cannot be denied that the respondent-plaintiff being a Police Constable was mandatorily required to seek permission from his department before entering into an agreement to purchase property of such a high value. However, admittedly, he did not seek any such permission from the department. As per the disputed agreement, the appellant-defendant agreed to sell the suit land to the respondent-plaintiff @ Rs. 5,00,000/- per *Killa*, which was just about half of the market rate of the land at the relevant point of time, as admitted by the respondent-plaintiff. Going by the rate as fixed in the disputed agreement, the total sale consideration would have amounted to approximately,

Rs.18,87,000/-. The disputed agreement recites that the appellant-defendant had received earnest money to the tune of Rs.16,00,000/- for the purpose of doing agriculture and to buy cheaper and better land nearby. Thus, a lion's share of the sale consideration was already paid to the appellant-defendant at the time of the execution of the disputed agreement and the remaining amount was hardly 15% of the total value of the suit land as agreed upon between the parties. Therefore, it does not stand to reason that the respondent-plaintiff being a Police Constable would part with a huge sum of Rs.16,00,000/- towards a transaction to purchase land and thereafter, agree to defer the execution of the sale deed to a date almost 16 months later with the balance amount being a fraction of the total sale consideration.

29. Apparently thus, there was no rhyme or reason as to why, the respondent-plaintiff would agree to defer the execution of the sale deed to a date more than a year and four months after the execution of the disputed agreement. Thus, the disputed agreement i.e., the agreement to sell read in entirety is highly suspicious and does not inspire confidence at all.

30. As per the disputed agreement, the consequence of non-appearance of the appellant-defendant at the Registrar's office on

19th September, 2008 and his failure to get the sale deed registered, was that the appellant-defendant would be liable to return the earnest money of Rs.16,00,000/- along with a penalty of equal amount, totalling to Rs.32,00,000/- and even thereafter, the respondent-plaintiff would be entitled to file a case in the civil Court for the execution of the sale deed. Simultaneously, it was agreed that if the balance amount was not paid by the respondent-plaintiff, the earnest money would be liable to be forfeited by the appellant-defendant.

31. As per the averments made in the plaint, the respondent-plaintiff did not even once, during the aforesaid period of 16 months, approach the appellant-defendant for getting the sale deed executed in terms of the disputed agreement. He claimed that he straight away proceeded to the Sub-Registrar's office on 19th September, 2008 and remained present there from 09:00 am to 05:00 pm waiting for the appellant-defendant to turn up and get the sale deed registered. However, the appellant-defendant failed to appear at the office of the Sub-Registrar on the scheduled date. Admittedly, the respondent-plaintiff did not give any advance intimation to the appellant-defendant imploring him to receive the balance consideration and execute the sale deed on the scheduled

date i.e. 19th September, 2008 or anytime thereafter. Instead, he directly proceeded to file the subject suit in the month of December, 2008 wherein, alternative prayers, one for the execution of the sale deed and the other for the refund of the earnest money were made.

32. *Ex-facie*, the averments set out in the plaint and the evidence of the respondent-plaintiff do not bear an *iota* of truth and appear to be nothing but a sheer concoction. The circumstances noted above, the evidence of the respondent-plaintiff; the disputed agreement and the plaint clearly indicates that the disputed agreement seems to have been prepared on a blank stamp paper on which, the thumb impressions of the illiterate appellant-defendant had been taken prior to its transcription. The large blank spaces on the first and second pages of the disputed agreement and the absence of thumb impression/signatures of the parties and the attesting witnesses on these two pages, fortifies the conclusion that the disputed agreement was transcribed on one of the blank stamp papers on which the thumb impression of the appellant-defendant had been taken beforehand.

33. It may be mentioned here that the appellant-defendant appeared before the trial court, to give evidence as DW-1 and

emphatically denied the factum of the execution of the disputed agreement. He also denied having received a sum of Rs.16,00,000/- from the respondent-plaintiff. The trial Court disbelieved the version of the respondent-plaintiff on the aspect that the disputed agreement, for the execution whereof the subject suit was filed, was an agreement to sell and instead treated the amount mentioned in the disputed agreement to be a loan. However, on-going through the cross-examination conducted from the appellant-defendant, we do not find any suggestion whatsoever that the amount of Rs. 16,00,000/- was given to the appellant-defendant by way of loan.

34. On perusal of the plaint and the affidavit by way of examination-in-chief of the respondent-plaintiff, a very significant fact can be culled out. The respondent-plaintiff did not even make a whisper in his deposition affidavit that when he proceeded to the office of the Sub-Registrar on 19th September, 2008, he was carrying the balance sale consideration with him. Furthermore, it is not the case of the respondent-plaintiff that he ever offered the balance sale consideration in terms of the disputed agreement to the appellant-defendant at any point of time either before 19th

September, 2008 or on 19th September, 2008, when the respondent-plaintiff appeared before the Sub-Registrar.

35. The respondent-plaintiff admitted that he did not seek permission from his department before entering into the agreement for purchase of property having high value. It is not the case of the respondent-plaintiff that he and the appellant-defendant were on such close terms that he would readily agree to give cash loan to the appellant-defendant without any security.

36. The factors enumerated above, are sufficient for this Court to conclude that the entire case of the respondent-plaintiff regarding the execution of the disputed agreement; the alleged payment of Rs. 16,00,000/- in cash to the appellant-defendant on 7th May, 2007 and the alleged appearance of the respondent-plaintiff in the office of the Sub-Registrar in the purported exercise of getting the sale deed executed in terms of the disputed agreement is nothing but a sheer piece of fraud and concoction.

37. These vital factual aspects were totally glossed over by the Courts below while deciding the suit, the first appeal and the second appeal. In these facts and circumstances, we find it to be a fit case to exercise our powers under Article 136 of the Constitution of India so as to interfere with the impugned judgements.

38. Hence, there cannot be any escape from the conclusion that the judgment and decree dated 18th February, 2013 rendered by the trial Court, judgment dated 20th March, 2017 passed by the First Appellate Court and the judgment dated 25th April, 2018 rendered by the High Court suffer from perversity on the face of the record and hence, the same cannot be sustained.

39. Resultantly, the appeal succeeds and is hereby allowed.

40. The impugned judgments are hereby quashed and set aside. Decree be prepared accordingly. No order as to costs.

41. Pending application(s), if any, shall stand disposed of.

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

.....J.
(SANDEEP MEHTA)

New Delhi;
September 27, 2024

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